

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAUL HUPP,

Plaintiff,

vs.

SAN DIEGO COUNTY, et al.

Defendants.

CASE NO. 12-cv-0492-GPC-JLB

**ORDER GRANTING
DEFENDANTS COUNTY OF SAN
DIEGO AND JOSEPH CARGEL'S
EX PARTE APPLICATION TO
FILE ANSWER AND MOTION
FOR JUDGMENT ON THE
PLEADINGS**

[Dkt. No. 292]

As the Court has noted in a previous Order filed in this case, (Dkt. No. 289), only the twelfth cause of action remains of the twelve causes of action alleged against the various Defendants in Plaintiff's Third Amended Complaint ("TAC"), the current operative complaint (Dkt. No. 64). That cause of action, as alleged against the County of San Diego and Joseph Cargel ("Defendants") was stayed pending resolution of Plaintiff's state criminal appeal proceeding pursuant to this Court's order. (*See* Dkt. No. 156.) The Court ordered the parties to notify it upon the conclusion of any underlying appeal and to seek leave via *ex parte* application before filing any further motions. (Dkt. No. 291.)

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1 In their *ex parte* application, Defendants now advise the Court that on
2 January 8, 2015, the California Court of Appeal affirmed Plaintiff's criminal
3 conviction, and that on April 1, 2015, the California Supreme Court denied
4 Plaintiff's petition for review and that the case was considered "complete" as of
5 April 8, 2015. (Dkt. No. 292.)

6 In support of their *ex parte* application, Defendants request judicial notice of
7 the following two documents (Dkt. No. 292-1):

- 8 • **Exhibit A:** Opinion of the Court of Appeal, Fourth Appellate District
9 of California, Division One, Case No. D064053 (*The People v. Paul*
10 *Hupp*) filed 1/8/15 (Dkt. No. 292-2);
- 11 • **Exhibit B:** Docket (Register of Actions) for Court of Appeal, Fourth
12 Appellate District of California, Division One, Case No. D064053 (*The*
13 *People v. Paul Hupp*) (Dkt. No. 292-3).

14 A court may take notice of undisputed "matters of public record" subject to
15 judicial notice. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001)
16 (citing Fed. R. Evid. 201; *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th
17 Cir. 1986)). Under Federal Rule of Evidence 201, a district court may take notice of
18 facts not subject to reasonable dispute that are capable of accurate and ready
19 determination by resort to sources whose accuracy cannot reasonably be questioned.
20 Fed. R. Evid. 201(b); *see also Lee*, 250 F.3d at 689. Defendants' two requests for
21 judicial notice are properly noticeable as the documents are matters of public record
22 and are capable of accurate and ready determination. Finding the Opinion of the
23 Court of Appeal and the Docket (Register of Actions) for the state appeal
24 proceeding relevant, the Court takes judicial notice of both documents.

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1 Since the state court criminal appeal has been completed, the Court hereby
2 issues the following **ORDER**:

- 3 1. The stay of above-captioned matter is hereby **LIFTED**;
- 4 2. Defendants' *ex parte* application to file an Answer and Motion for
5 Judgment on the Pleadings is **GRANTED** and Defendants are
6 instructed to file an Answer and Motion for Judgment on the Pleadings
7 within **three (3) days** of the electronic docketing of this Order; and
- 8 3. The Court takes judicial notice of the following documents:
 - 9 a. **Exhibit A**: Opinion of the Court of Appeal, Fourth Appellate
10 District of California, Division One, Case No. D064053 (*The*
11 *People v. Paul Hupp*) filed 1/8/15; and
 - 12 b. **Exhibit B**: Docket (Register of Actions) for Court of Appeal,
13 Fourth Appellate District of California, Division One, Case No.
14 D064053 (*The People v. Paul Hupp*).

15 **IT IS SO ORDERED.**

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17 DATED: August 20, 2015

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19 HON. GONZALO P. CURIEL
20 United States District Judge
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